

**Town of Milford
Zoning Board of Adjustment Minutes
April 5, 2012
Case #2012-04
34 Hammond Rd. LLC d/b/a JP Pest Services
Variance**

Kevin Johnson, Chairman
Laura Horning
Fletcher Seagroves
Steve Winder
Zach Tripp

Secretary: Peg Ouellette

The applicant, 34 Hammond Rd LLC dba JP Pest Services, owner of 34 Hammond Road, Map 43, Lot 70, in the Commercial District, is requesting a Variance from Article VII Section 7.06.7:E.2, to install two (2) wall signs totaling 100 SF. The maximum allowed signage, based on 50% of the storefront's linear measurement of 100 ft, is fifty (50) square feet.

Minutes for case 2012-04 were approved and signed on April 19, 2012.

Kevin Johnson, Chairman, opened the hearing by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board; he then introduced the Board. He read the notice of hearing into the record as well as the list of abutters. Joe Pestano appeared for 34 Hammond Rd LLC and Paul Tripp appeared for Classic Signs.

The Chairman asked the applicant to present his case.

P. Tripp from Classic Signs, Amherst, NH introduced himself to the Board. He said they are requesting 100 SF of signage with the understanding that 100 SF is allowed in that zone and would be allowed if the building were larger. In the application they have photos of two new signs, one of which would be approved because it is under the square footage, and one that would not be. He stated the applicant is willing to forgo the total amount of ground signage allowed, where he could have a fifteen (15) foot tall, 75 SF ground sign as well as 50 SF of wall sign. It is not logical to do that because the property line is so close to the state right of way. It is beneficial to have wall signage; generally wall signage is less destructive. They do want to preserve some square footage for a small ground sign by the entrance on Hammond Road as you enter the property. They are contemplating at least 12 SF for the entrance sign.

K. Johnson asked to point out a couple of things. First, they don't trade this sign for that sign, mainly because they are not allowed to do that. There is no way, in granting a variance for additional square footage for the sign in question, that the Board could deny the ability to have the other sign which is allowed. And the other sign referred to would be considered an off-premise sign which has its own specific requirements. Unless there has been a change in the 2012 requirements that he hasn't seen, there is no cumulative total. You can put up a ground sign, an off-premise sign, a wall sign, a marquee sign, etc. so long as each individual sign met the requirements. The Board needs to evaluate-- ignoring applicant's intent to put up a ground sign and ignoring whether or not there will be any other sign-- whether for this building, in this location, with these dimensions, as it sits, it is reasonable to allow 100SF of signage.

P. Tripp said just to clarify, there has not been any intention to have an off-premises sign.

K. Johnson said that he would be surprised if they didn't have one to indicate where to turn to get down to the business.

J. Pestano stated that he thinks P. Tripp was not referring to the beginning of Hammond Road, but to the beginning of his property line. The entrance to the property on Hammond Road was where he intended to put up a small ground sign, not down by Rte. 13.

K. Johnson stated he would think by Rte. 13 would be the logical place

J. Pestano said the public will see the business from the highway.

K. Johnson stated his concern would be that they would be seen from the highway but once they take the exit to get off the highway, where do they turn to get there, which is why he thought the applicant would be interested in the off-premise sign. And which is why they are allowed the off-premise sign, and so on. And he can see nothing in the result of the vote material or the material sent by the secretary that there is a cumulative limit to signage. So the welcome sign, the park sign, etc. are all separate signage on their own. They need to treat that set of signage on the walls of the business as wall signage and consider what the Board is going to allow there. Any other signage as is appropriate to that business is addressed in the individual sections.

K. Johnson asked if there was anything else the applicant had to present.

P. Tripp said no, other than the fact that they have designed a distinctive sign to be halo-lit illuminated and showed a new photo as an example. It is an attractive sign. It is the most expensive way to build it, but Mr. Pestano has agreed to do it to have the nicest type of illuminated sign. They have designed the sign -- 100SF of wall sign is allowed in that zone and if the building were a little bigger they would not be before the Board. They feel the sign is appropriate for the building. The building is uniquely positioned

on an angle so that the larger of the two signs will be visible after you have passed it and you would look over your shoulder.

Z. Tripp asked if the photo shows the shape of the building on the property.

K. Johnson said it is an old picture showing the previous structures, before construction started.

F. Seagroves asked if this is the side of the building that is facing the highway.

P. Tripp said yes.

K. Johnson said the corner of the building is almost a 45-degree angle to the highway.

F. Seagroves asked if people would see this sign better going toward Amherst than going toward Wilton. The one on the wall itself?

P. Tripp said that is correct.

K. Johnson said the one on the wall would be eastbound towards Amherst. It would be difficult – you would have to specifically by looking at the building as you come next to it to see the sign from that direction. You would not see any signage as you approach until you begin to pass it. From the other direction, that faces primarily – you don't notice unless you are passing it by. The sign on the peak would be virtually invisible to any traffic on Rte. 13.

P. Tripp said they initially designed the signage so that it would not be more than 100 SF which is the maximum for that zone. He said if you've driven by the building, it is a very large wall. So, it is scaled to the building so that it looks right. If it is made smaller you would wonder why they made such a small sign on this giant white building.

L. Horning said they are trying to balance it with the size of the building.

Z. Tripp asked if their other building is directly across from Rte. 101.

J. Pestano said it is not directly across. He pointed to the photo showing his other property. He said he tells people it is across from the highway but it is across from and eastbound a little bit.

J. Pesano pointed to photos of signs saying it would be illuminated. That is about it, as far as letting the Board know what they are trying to do and show scale to the property.

F. Seagroves asked how long the sign will be illuminated at night. Will it be all night?

P. Tripp said it is up to the client. He doesn't remember whether Milford has a restriction in the ordinance.

F. Seagroves said there is none that he knows of.

J. Pestano said the sign on his other building goes all night. They would probably run this all night because there are LEDs in it.

P. Tripp said they draw 1/100th of the power of a normal lamp.

F. Seagroves asked if it is not as bright as a regular bulb?

P. Tripp said definitely not. They are backlit.

L. Horning said it is more of a glow.

P. Tripp agreed. He said they are designed right against the wall. It is a very clean, very distinctive look.

K. Johnson opened the meeting for public comment. There were none.

K. Johnson closed the public portion of the meeting.

K. Johnson said there were no communications received regarding this case.

K. Johnson asked the applicant to read his application into the record.

Applicant read:

A variance is requested from Article 7 Section 7.06.7:3.2 of the Zoning Ordinance to permit 100 SF of wall signage.

1. **Granting the variance would not be contrary to the public interest because:**
The ordinance allows for a total of 125 Sq. ft. of combined ground and wall signs. By not installing a 75 sq. ft. ground sign, this property will have overall less signage.
2. **The use is not contrary to the spirit of the ordinance because:**
100 square footage of wall signage based on linear frontage of the building is allowed

(he added it should read “within the zone”). The two proposed wall signs effectively minimize the potential adverse effects on nearby public and other private property.

3. Granting the variance would do substantial justice because:

With the State right of way being so close to the driveway, there are no good locations to effectively market the business with a large ground sign. Wall signs are far less obtrusive and with the extended distance visibility, larger wall signs are necessary.

4. The proposed use would not diminish surrounding property values:

Properly scaled wall signs do not diminish the surrounding property values since they do not create additional safety concerns, noise pollution or environmental issues.

5. Denial of the variance would result in unnecessary hardship.

(A) “Unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision because

the application does not hinder the protection to the public safety and welfare and is designed to reduce the clutter of signage and is in scale to the lot and zone in which it is located. The ground level is substantially below the highway level and a 15’ tall sign would not effectively market the business.

ii. and; The proposed use is a reasonable one because:

the wall in which the larger sign is located is so big a smaller sign would feel out of scale.

(B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

F. Seagroves said, going back to #4, regarding noise pollution, in this case, we would probably be talking about light pollution also, and the applicant has already addressed that. That is why he asked the question, because people are concerned about light pollution.

K. Johnson continued to the consideration of the criteria:

Could the variance be granted without diminishing the value of the abutting property?

Z. Tripp said yes. It would not be visible to the abutting property from that side and the other abutting property across the street belongs to this owner.

F. Seagroves said yes, this could be granted without diminishing the value of the abutting property. Just down the street there is another business that has a wall sign on it.

L. Horning said she doesn’t believe it will diminish the value of any butting property. The highway is already lit in that area all night long. The only two immediate homeowners , the one across the road is significantly far away, and the only other immediate homeowner abutter would be the property owner himself. So she doesn’t see how putting up a lit sign is going to diminish the abutting property. They are mostly businesses in that area.

S. Winder said it could be granted. It is in a commercial area. There has been a business there previously and they will increase the commercial value of the property.

K. Johnson agreed the variance could be granted without diminishing the value of the abutting property. It is clear the applicant has considered the visual effect on the building. These signs would be created and put in place with the intent of backlit signage and there would be no light pollution to disturb adjoining businesses or the traffic on the roadway. So he feels it could be granted.

Would granting the variance not be contrary to the public interest?

S. Winder said yes. It is allowed within the variance and would be in the spirit of what the commercial district has in that area.

L. Horning said yes, granting the variance would not be contrary to the public interest taking into consideration the public interest. The applicant addressed that criteria and protecting the public safety and welfare of the public. This poses no immediate safety hazard to pedestrians, traffic or any other nuisance. So, it could be granted .

Z. Tripp agreed. He doesn't think allows 100 SF would alter the character of the neighborhood.

F. Seagroves said yes . He doesn't see where it would be contrary to the public interest and in looking at it, it does look nice and will help the area.

K. Johnson agreed. He said Board is governed not just by the ordinances they are required to apply, but also State statutes and the court decisions of New Hampshire and in this particular criteria the determination is: *does the variance alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public*. He said as Z. Tripp stated the way the signage is, it is a sign and there is no possibility of it altering the character of the neighborhood. He believes it fits well with the design the building. This is commercial area with other commercial buildings that have signage, so there is no alteration of the character of the neighborhood. Since this doesn't involve bright flashing colored lights and anything garish which might endanger traffic on the nearby highway, he feels it is a very well-designed aesthetic sign that will promote the business without being any threat to safety.

Would denying the variance cause unnecessary hardship taking into consideration the following consideration:

- A. i. No fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of that provision to the property; and**
- ii. the proposed use is a reasonable one.**

K. Johnson stated if the Board finds NO on that, there is an alternate (section B) that they can consider, but he will wait for a decision on this one.

F. Seagroves said he was going to comment on B. He said under B, the special conditions of the property distinguish it from others in the area. They are down in a gulley and so close to the State property, this is the best place to put signage. The other signage they could put up they can only go up 15 feet from the ground and that would not get them up to the level of the road. So, under special conditions felt this is the only way they can do it.

Z. Tripp said that most businesses have signs that are on a major road or thoroughfare. What is unique about this property is that it is situated at the end of a road where you don't have any direct traffic but you have the state highway and given the position of the state highway and the property is set back and down and this is unique. Given the 45 degree angle, as testified, there really isn't one surface pointing to the highway itself. Given the unique characteristics of this property, it can be granted without frustrating the purpose of the ordinance because the signs and the property are in scale and not intrusive or a danger.

S. Winder agreed with F. Seagroves' comments. Because of the fact that it's below the level of the highway it is hard to see. Without an illuminated sign to highlight the business, it makes no sense.

L. Horning said in answer to the Chairman's question, under Section A – no substantial and fair relationship between the general public purposes of the ordinance provision and the application of that provision to the property – the ordinances are designed to keep some kind of continuity and equity between businesses that are generally in a clustered area and places where people are not set. In an away area like this property it doesn't pose any general health or safety, welfare issues to the general public which is also we have ordinances in place to protect the welfare of the public- to create continuity and keep certain districts within certain guidelines

and parameters so there is equity between the businesses. In the applicant's situation, speaking to the topography of the lot, makes it unreasonable to put a 15 ft. sign on the ground. So for her, no fair and substantial relationship exists between the general public purposes of the ordinance or the application of the provision of the ordinance in this particular case.

K. Johnson agreed. He thought the denial of the variance would result in an unnecessary hardship. The property must have some unique characteristic to qualify. In this particular case it is the physical location being below the route, and the way the building is designed; what would be considered the front is the narrow side of the building. The long side is not considered the front which would have given the ability to have more square footage. In addition, the angle and position of the building to the major roadway for the visibility of the business. Also because of the angle and the shape and size of the lot which necessitated that angle, it makes it difficult to view a sign in either direction. He believed that what the applicant has applied for makes sense. It is very reasonable in that the way the building is positioned the signage is in proportion to the side of the building. He felt this proposal is reasonable and there are conditions of the property that strict application of the ordinance would result in a hardship.

Would granting the variance do substantial justice?

S. Winder – yes. He can't see any reason the public would gain by not allowing it.

L. Horning feels granting the variance would do substantial justice. The draw of more customers to that area where there are other businesses located, increase in property values in the area because the signage will be done in a respectful, clean-cut manner. Granting the variance would absolutely be a substantial justice.

Z. Tripp agreed. Limiting the applicant to 50 SF would have no benefit the public.

F. Seagroves agreed. As it looks, the loss to the individual is not outweighed by the gain to the public. He doesn't see any gain to the public by decreasing the size of the sign.

K. Johnson agreed with the comments of F. Seagroves and the other Board members. Granting this variance would do substantial justice and he can see no loss to the public by allowing the additional square footage of signage. The gain to the public, as stated by L. Horning, by allowing this business to promote itself and become successful is good for the public.

Could the variance be granted without violating the spirit of the ordinance?

F. Seagroves –yes. Regarding promoting health, safety and general welfare of the community, there is no safety violation that could be caused by this being granted.

S. Winder said he did not see, if they agree to this, how it would create any nuisance to the public or create any panic in the street.

L. Horning agreed completely.

Z. Tripp said yes, he feels it can be granted without violating the spirit of the ordinance or the spirit of Section 7.06.1 A the criteria listed there. He read two of them. 6. *Minimize potential adverse effects on nearby public and other private property.* 7. *Complement the character of the zoning districts' existing land uses, ...* He believes as the applicants have testified, that it meets the limitations of 6 & 7 and there would be no adverse effects and it does complement the character.

K. Johnson stated that normally he reads the intent of the ordinance from the ordinance itself. However, in this section of the sign ordinance it is nearly a full page. He has read it himself and granting this variance would not violate the spirit of the ordinance. As L. Horning had pointed out, most businesses are in clusters and they are trying to avoid each business trying to outdo the other in signage. Here, this is a separate stand-alone business in a unique location that has its own very specific requirements and allowing this additional square footage for this building in this area is well within the spirit of the ordinance.

L. Horning stated the ordinance is available on-line for the viewers who are watching.

K. Johnson asked for any other questions or comments from the Board. There were none. K. Johnson proceeded to the vote on the applications.

Would granting the variance not be contrary to the public interest?

F. Seagroves – yes; L. Horning – yes; Z. Tripp – yes; S. Winder – yes; Chair – yes.

Could the variance be granted without violating the spirit of the ordinance?

Z. Tripp – yes; S. Winder – yes; L. Horning – yes; F. Seagroves – yes; Chair – yes.

Would granting the variance do substantial justice?

L. Horning – yes; F. Seagroves – yes; S. Winder – yes; Z. Tripp – yes; Chair – yes.

Could the variance be granted without diminishing the value of abutting property?

S. Winder – yes; Z. Tripp – yes; F. Seagroves – yes; L. Horning – yes; Chair – yes.

Would the denial of the variance result in unnecessary hardship?

F. Seagroves – yes; L. Horning – yes; S. Winder – yes; Z. Tripp – yes; Chair – yes.

Chairman Johnson requested a motion to approve the variance requested in Case #2012-04.

S. Winder made a motion to approve.

F. Seagroves seconded.

Final vote:

S. Winder – yes, Z. Tripp – yes, F. Seagroves – yes, L. Horning – yes, K. Johnson – yes.

K. Johnson informed the applicant that he has been unanimously approved for the variance and reminded him of the 30-day appeal period.